

Chapter 6

Permit Requirements

Overview

Introduction This chapter discusses general permit requirements, as well as the different requirements for agricultural and non-agricultural use restricted materials permits. This chapter also discusses requests for permit amendments.

Definitions The following terms are used in this chapter:

- **Contiguous:** A property whose boundary is not broken by public road(s), rights-of-way, or permanent waterways. Each CAC would identify rights-of-way and permanent waterways in his/her respective county.
- **Site:** An area no larger than the property operator's contiguous property and no smaller than one crop location.

In this chapter This chapter contains the following topics:

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Section 6.1

General Permit Requirements

Permit required

Generally, any person that plans to use or possess a restricted material must first obtain a written permit from the CAC. The process to obtain a permit begins with the permit application. The application becomes a permit when it is signed by an authorized person (see page 6-3, *Who is qualified to issue permits*). For exemptions to permits, see Chapter 5, *Permits and Exemptions*. (Reference: *FAC section 14006.5*)

Only one permit is required for each operation, regardless of the number of sites involved, however, CACs may choose to issue separate agricultural use and non-agricultural use permits for the same operation.

Forms

Each application and permit to use or possess a restricted material must be on a form approved by DPR. All information required for a written NOI must also be on forms approved by DPR. (Reference: *3 CCR section 6424*)

Restricted Materials Permit Program software provided to CACs by DPR has been approved by DPR and is consistent with the requirements of 3 CCR section 6424. Other permit software programs currently in use, the Restricted Materials Management System (RMMS) and Agriculture Geographic Information Systems (Ag GIS), are vendor supported and are based on the approved RMPP software.

DPR forms for use by CACs are available at the DPR website. See *Inspection and other forms used by County Agricultural Commissioners* at: <http://www.cdpr.ca.gov/docs/enfcmpli/prenffrm/prenfmnu.htm>

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General Permit Requirements, Continued

Permit duration

The CAC may issue any permit for a one-year period, sometimes called a “seasonal” permit. The CAC may issue a permit for up to three years for the following sites:

- Perennial agricultural plantings;
- Non-production agricultural sites;
- Non-agricultural sites.

At the request of the applicant (permittee) or at the CAC’s discretion, the CAC may issue a permit for shorter duration of one application or a short series of applications. This is sometimes called a “job” permit.
(Reference: *3 CCR section 6422*)

Who is qualified to issue permits

While anyone may complete the permit application, only qualified CAC personnel may evaluate the application and issue permits. Qualified personnel are those who possess one of the following licenses issued by the California Department of Food and Agriculture:

- County Agricultural Inspector/Biologist in the category of:
 - Pesticide Regulation; or
 - Investigation and Environmental Monitoring;
- Deputy County Agricultural Commissioner; or
- County Agricultural Commissioner.

(Reference: *FAC section 12844(d)*)

To whom can permits be issued

An agricultural use permit may only be issued to a property operator.

A non-agricultural use permit may be issued to either a property operator, pest control business, or both. It is the CAC’s option to determine which or if both parties are required to obtain a non-agricultural use permit. (See Sections 6.2 and 6.3 for details on the permit differences.)
(Reference: *3 CCR section 6420*)

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General Permit Requirements, Continued

Who may sign the permit?

A permit issued to a property operator must be signed by one of the following:

- Permittee (property operator); or
- Authorized representative.

A non-agricultural use permit issued to a pest control business must be signed by one of the following:

- Pest control business owner; or
- Qualified applicator licensee or certificate holder responsible to supervise the operations of the pest control business.

(Reference: 3 CCR section 6420)

Documentation required for an authorized representative

The property operator's authorized representative, such as an employee or a licensed agricultural pest control adviser, may sign the permit. The authorized representative must provide the CAC with written documentation from the property operator to act on his/her behalf. The CAC must maintain a copy of the documentation with the permit.

CAC discretion

The CAC has the discretion not to accept a person as an authorized representative. It is up to the CAC to determine the circumstances of when a permit may not be signed by a particular authorized representative or by authorized representatives in general.

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General Permit Requirements, Continued

Enforcement strategy for alternative signatures

Occasionally, a permittee will argue that they did not sign a permit, therefore, they are not responsible for violations resulting from failure to adhere to the conditions of a particular permit. Regulations make the permittee responsible for all permit conditions (*3 CCR section 6420*).

The CAC may hold any or all appropriate parties responsible, depending on evidence they have collected, relative to the violation. It is important to remember three things in respect to permits that are signed by an authorized representative:

1. The permittee (property operator) is responsible for compliance with all permit conditions. *3 CCR section 6420(c)*; AND
2. The permittee may allow or authorize someone else to sign the permit on his or her behalf. *3 CCR section 6420(a) and (b)*; AND
3. The person, who is not the property operator, when signing a permit in the name of the property operator, must provide written documentation from the permittee to act on his or her behalf. *3 CCR sections 6420(a) and (b)*.

Responsibility requirements do not negate the need for the CAC to establish a connection between the permittee (property operator or pest control business) and the person (authorized representative or business representative) allowed to sign the permit when the CAC decides to initiate an enforcement action against the permit or permittee. The CAC must maintain evidence of a connection between the permittee and the person who signed the permit on behalf of the permittee.

What if the signatory leaves employment?

The permit remains valid through the date specified on the permit, unless otherwise revoked, even though the person signing the permit on behalf of the permittee is no longer employed by the permittee. However, if the signatory who left employment of the permittee was the certified applicator identified on the permit, the permittee must identify another certified applicator who will supervise the use of the restricted material before any further use of a restricted material. The permittee may identify the certified applicator, which could be a pest control business, either by requesting a permit amendment or by identifying the person at the time of the NOI.

Section 6.2

Agricultural Use Restricted Materials Permit Requirements

Introduction	Permits for the agricultural use of restricted material pesticides may be issued only to the operator of the property to be treated. The permittee (property operator) is responsible for compliance with all permit conditions, regardless of who signs the permit on their behalf. (Reference: 3 CCR section 6420)
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“Agricultural use” defined	“Agricultural use” is defined in FAC section 11408. For a full discussion of the distinction between agricultural use and non-agricultural use, see Appendix E, <i>Understanding California’s Definitions of Agricultural and Non-Agricultural Use Pest Control</i> .
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Restricted materials permit application requirements	<p>The permit application for the agricultural use of a restricted pesticide must include the information required by 3 CCR section 6428. With the exception of the map and the identification of the certified applicator as discussed below, the restricted materials permit application form and permit software have fill-in-the-blank sections for all the requirements of section 6428. All sections, except the “justification for non-ag use,” must be filled out.</p> <p>One of the items required is the identification of all known areas that could be adversely impacted by the use of the pesticide(s). This includes areas such as hospitals, schools, playgrounds, residential areas, labor camps, parks, lakes, waterways, wildlife management areas, livestock, or crops. An attached map or aerial photograph is generally used for designating such areas.</p> <p>Another requirement is to include specific information about the certified applicator responsible for supervising the possession or use of the restricted material(s). The name of the pest control operator, if any, and the certified private or commercial applicator’s name, business address, and license or certificate number with expiration date must be included on the permit application, or be provided at the time of the NOI. If the permit program in use does not have a specific section to include this information, it may be entered in the “contacts” section or a copy of the certification may be attached to the permit.</p>
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Agricultural Use Restricted Materials Permit Requirements,

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Agricultural use permits are time and site specific

It is necessary to make the permit time specific and site specific in order to assess the effects of restricted use pesticides on the environment. Accordingly, the permittee is responsible to ensure that the CAC is notified at least 24 hours prior to commencing the use of a restricted material (NOI). This is a CEQA requirement. “Time specific” and “site specific” are defined in 3 CCR section 6000.
(Reference: 3 CCR sections 6422 and 6434)

Adjustment to the 24 hours notice

The CAC may allow less than the required 24 hours notice for the NOI only when it is determined that:

- 24 hours will interfere with effective pest control; and/or
- 24 hours are not necessary to adequately evaluate the application.

Less than 24 hours notice should be the exception, not the rule. It is intended to address emergency situations; it is not intended to facilitate poor planning.
(Reference: 3 CCR section 6434)

The CAC is authorized to require more than 24 hours for the NOI by permit condition.

Emergency provision

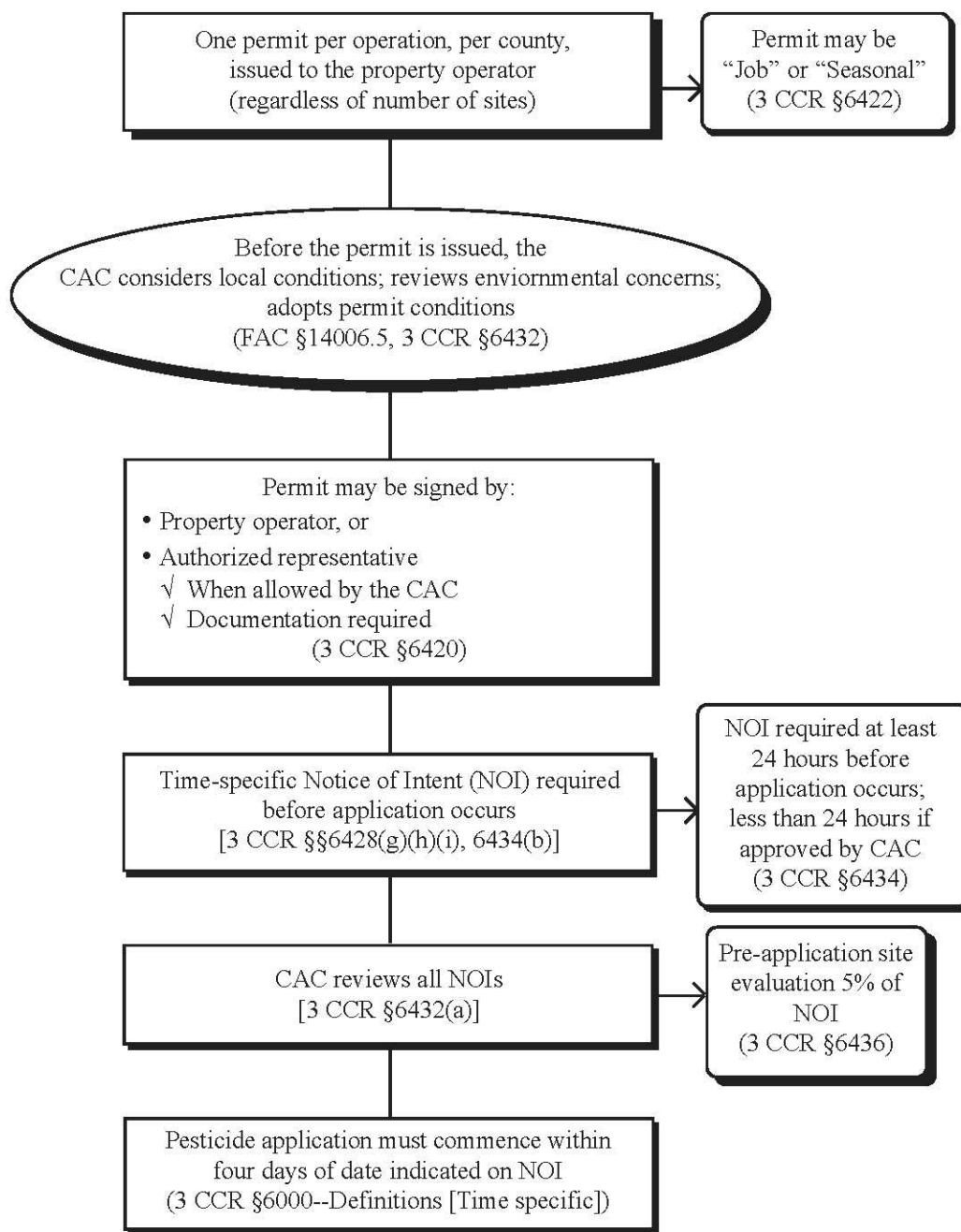
The pesticide use may be delayed for up to four days without refileing an NOI **only if delays are caused by uncontrollable conditions**, such as adverse weather or unavailability of equipment. This is strictly an emergency provision and should not be viewed as a convenience. See previous block.
(Reference: 3 CCR section 6000)

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Agricultural Use Restricted Materials Permit Requirements, Continued

Agricultural use flow chart

The flow chart below summarizes the steps involved in issuing permits for agricultural use (3 CCR section 6428).



Section 6.3

Non-Agricultural Use Restricted Materials Permit Requirements

Introduction

Permits for non-agricultural use may be issued to the operator of the property to be treated, the pest control business licensee, or both. DPR and the CAC decide who is required to obtain the permit. The permittee is responsible for compliance with all permit conditions.

“Non-agricultural use” defined

There are a number of exclusions within the definition of agricultural use in FAC section 11408. By default, those exclusions define non-agricultural use. For a full discussion of the distinction between agricultural use and non-agricultural use, see Appendix E, *Understanding California’s Definitions of Agricultural and Non-Agricultural Use Pest Control*.

Restricted materials permit application requirements

The permit application for the non-agricultural use of a restricted pesticide must include the information required by 3 CCR section 6430. There are a number of important differences between the information required for a non-agricultural use of a restricted material and the agricultural use of a restricted material.

One of the differences is that a non-agricultural permit application must identify the criteria used for determining the need for a restricted pesticide application. Another difference is that a certified private applicator is not qualified to be the certified applicator responsible for supervising the possession or use of the restricted material(s) for a non-agricultural permit.

Commodity fumigations

DPR recommends that all permits for commodity fumigations at fixed facilities be issued to the facility operator to properly evaluate potential impacts on the surrounding environment and the need for adequate mitigation measures.

When the treatment is done by a pest control business, either agricultural or structural, that business needs to be covered by permit conditions, either directly or through conditions on the facility operator’s permit.

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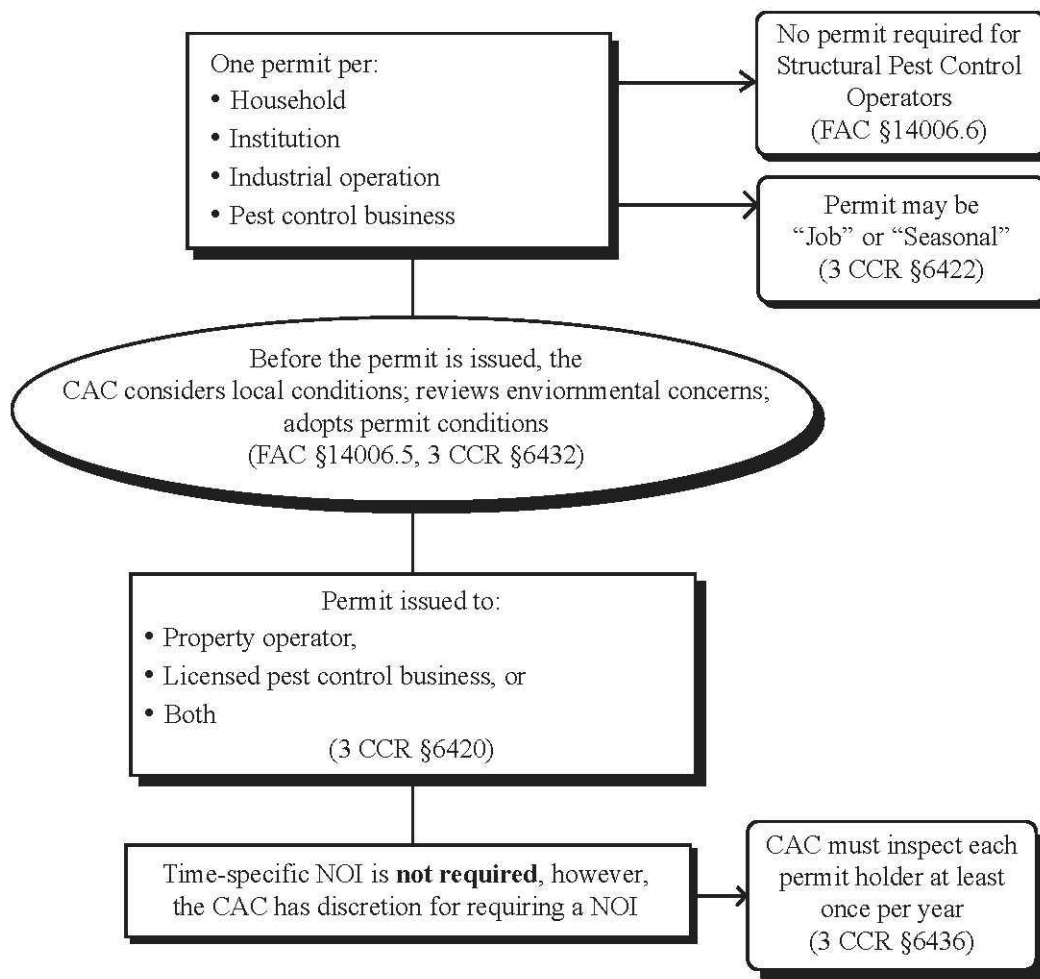
Non-Agricultural Use Restricted Materials Permit Requirements, Continued

NOIs for non-agricultural permits

The pesticide use of each non-agricultural permit holder must be inspected at least once per year regardless of the duration of the permit. Either a site evaluation or a use inspection may be conducted to meet this requirement. An NOI is not required by regulation for non-agricultural permits, however, a CAC has discretion to require an NOI as a permit condition. Requiring an NOI may be useful to facilitate inspections.
(Reference: 3 CCR section 6436)

Non-agricultural use flow chart

The flow chart below summarizes the steps involved in issuing permits for non-agricultural use (3 CCR section 6430).



Section 6.4

Amending the Restricted Materials Permit

Permit amendments	If a permittee (or authorized representative) wishes to add a pesticide, commodity, or site to a restricted materials permit, he or she must submit an amendment request to the CAC. The amendment request may be in-person, fax, drop box, or mail.
CAC discretion	The CAC must exercise discretion regarding the types of permit amendment requests they accept by fax, drop box, or mail. This discretion must not impede fulfillment of the requirements of the permit program.
CAC approval	<p>When considering an amendment application, the CAC must ensure that the requirements in 3 CCR, Division 6, Subchapter 4 (Restricted Materials), Article 2 (Possession and Use Limitations), are met. The permittee and CAC must sign and date the amendment. If the amendment was not approved in-person, the CAC may return the approved amendment to the permittee by fax or by mail.</p> <p>The permittee should be made aware that a permit is not final, and a pesticide application cannot proceed, until he/she receives a signed copy from the CAC.</p>
Minor permit changes	Minor permit changes, such as adding or deleting a pest, correcting the address, or adding or deleting a pest control business, may be amended by a telephone call.
